

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 22, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER TYLER, an individual,

Plaintiff,

v.

CHELAN COUNTY, by and through
its agency, and CHELAN COUNTY
SHERIFF'S OFFICE, a Washington
municipal corporation,

Defendants.

NO: 2:19-CV-172-RMP

AMENDED JURY TRIAL
SCHEDULING ORDER

On February 7, 2020, the Court granted the parties' Stipulated Motion to Stay Case, ECF No. 10. On April 5, 2021, the parties filed a Status Report indicating that the parties are ready to proceed with litigation, ECF No. 14. The Court lifted the stay at ECF No. 15, and directed the parties to file an updated Joint Rule 26 Report, which was filed at ECF No. 26. Accordingly, **IT IS HEREBY ORDERED:**

1. *Protocol for Video Hearings*

In the event video hearings are preferred or necessary, the parties shall abide by the following:

AMENDED JURY TRIAL SCHEDULING ORDER ~ 1

1 (a) In advance of participating in a hearing by video conference, all
2 personal equipment, software, and the internet connection should be tested to
3 ensure that a case participant's means of connecting to the hearing is fully
4 operational.

5 (b) Participants in the video conference shall mute themselves when
6 not speaking.

7 (c) Participating parties will be provided connection instructions from
8 the Court via email prior to the hearing. The public may listen to hearings by
9 calling Court's public conference line at **888.363.4749**, and entering **access**
10 **code 4939688#** five minutes before the hearing.

11 (d) **No recording or rebroadcasting is permitted for any hearing.**

12 **2. Motion Practice**

13 (a) All parties shall adhere to LCivR 7.

14 (b) Motions to Expedite, if any, shall be filed separately and noted for
15 hearing at least seven (7) days from the date of filing, pursuant to LCivR
16 7(i)(2)(C). If the matter needs to be heard on a more immediate basis, the
17 party filing the motion shall advise chambers of such.

18 (c) All motions will be heard without oral argument unless oral
19 argument is requested and approved by the Court. If oral argument is
20 desired, the parties must contact the courtroom deputy to acquire a hearing
21

1 date, *see* LCivR 7(i)(3)(B), and must advise the courtroom deputy why oral
2 argument would be appropriate.

3 (d) All motion hearings in which oral argument has been approved
4 shall be set for in-person appearance; however, the parties may request to
5 appear by video conference.

6 (e) Notwithstanding the foregoing procedure, the Court may decide
7 that oral argument is not warranted and proceed to determine any motion
8 without oral argument. *See* LCivR 7(i)(3)(B)(iii).

9 **3. *Initial Disclosures***

10 The parties submit that initial disclosures were completed on August 9, 2019,
11 pursuant to the original Jury Trial Scheduling Order. ECF No. 16 at 3.

12 **4. *Expert Disclosures***

13 The parties shall exchange the materials identified in Fed. R. Civ. P.
14 26(a)(2)(B) in accordance with the following schedule but shall not file these
15 materials with the Court.

16 (a) Each party shall identify its experts and serve written reports as
17 required by Rule 26(a)(2) on all other parties by **September 9, 2021**.

18 (b) Each party shall identify its rebuttal experts and serve written
19 reports as required by Rule 26(a)(2) on all other parties by **October 29, 2021**.

20 (c) The parties may modify the deadline for exchange of expert
21 disclosures by joint stipulation filed with the Court; **a motion is not required**.

1 **5. *Discovery***

2 (a) All discovery shall be completed by **November 24, 2021**.

3 (b) The parties shall file no discovery except as necessary to support
4 motions.

5 (c) The parties are expected to resolve discovery issues according to
6 the Federal Rules of Civil Procedure and the Rules of Professional Conduct.
7 However, if there is a genuine issue that cannot be resolved by the parties
8 without Court intervention, the parties may call the courtroom deputy and
9 request a video discovery conference with the Court. Once a status
10 conference has been set, the parties shall email a succinct, one-to-two
11 paragraph summary of the issue to the courtroom deputy and to each other.

12 **6. *Dispositive Motions and Motions to Exclude Expert Testimony***

13 (a) All dispositive motions and motions challenging the admissibility
14 of expert opinion testimony on the basis of *Daubert v. Merrell Dow*
15 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), shall be filed and served by
16 **December 17, 2021**.

17 (b) Briefing for *Daubert* motions shall follow this district's timeline for
18 non-dispositive motions. *See* LCivR 7(c)(2), (d)(2).

19 (c) As with all motions filed in this case, dispositive motions and
20 *Daubert* motions shall comply with the page limits set forth in LCivR 7(f).
21

1 (d) If the party challenging expert testimony anticipates that an
2 evidentiary hearing is required, the party shall so advise the Court and
3 opposing counsel in conjunction with the filing of its *Daubert* motions by
4 filing a separate notice of request for evidentiary hearing, describing the
5 nature of the evidence to be presented and providing an estimate of the
6 amount of time required for the hearing.

7 (e) The party seeking to exclude the testimony of an expert shall attach
8 a copy of the Rule 26(a)(2) report produced by said expert to the *Daubert*
9 motion.

10 **7. Settlement Status**

11 (a) By **January 14, 2022**, the parties shall file a Settlement Status
12 Certificate stating whether they would be in agreement to schedule mediation
13 with one of the court's senior judges or full-time magistrate judges.

14 (b) If the parties fail to file a Settlement Certificate by the date given,
15 the parties shall appear before the Court for a video status conference on
16 **January 21, 2022, at 9:30 a.m.** to discuss the prospect of a settlement
17 conference. This hearing shall take place only if the parties fail to file the
18 Settlement Certificate, in which case the parties will be provided with separate
19 connection instructions via email from the Court.

20 / / /

21 / / /

1 **8. *Exhibit and Witness Lists***

2 (a) Exhibit lists and witness lists shall be separately filed and served
3 and exhibits made available for inspection (or copies provided), by **March 17,**
4 **2022.**

5 (b) The witness list shall include identification of each witness's
6 testimony. Pretrial disclosure of the identity of all persons shall conform to
7 the requirements of Fed. R. Civ. P. 26(a)(1) (persons with relevant
8 knowledge) and 26(a)(3) (witnesses).

9 (c) For any expert witness included on the witness list, the proffering
10 party shall e-mail the Rule 26(a)(2) report to the Court at
11 peterasonorders@waed.uscourts.gov.

12 (d) Objections to the opposing party's witness and exhibit lists and any
13 accompanying briefs shall be separately filed and served by **March 24, 2022.**
14 Failure to comply with this paragraph could be deemed to constitute a waiver
15 of all objections. Do not submit blanket or boilerplate objections to the
16 opposing party's exhibits; these will be disregarded and overruled.

17 (e) All exhibits to which there is no objection shall be deemed
18 admitted, subject to any objections at trial that could not be raised in advance.

19 (f) Responses, if any, to objections to witnesses and exhibits shall be
20 separately filed and served by **March 31, 2022.**

(g) By **March 31, 2022**, the parties shall prepare and file a joint pretrial exhibit stipulation that contains each party's numbered list of all trial exhibits with the opposing party's objections to each exhibit, including the basis of the objection and the offering party's brief response. The pretrial exhibit stipulation shall be substantially in the following form:

Pretrial Exhibit Stipulation

Plaintiff's/Defendants' Exhibits

Exhibit No.	Description	If Objection, State Grounds	Response to Objection
-------------	-------------	-----------------------------	-----------------------

(h) Copies of exhibits to which there are objections shall be provided to the Court, on a flash drive or disk, by **March 31, 2022**.

(i) Objections to exhibits and witnesses shall be heard at the pretrial conference.

(j) Where feasible, all exhibits identified in depositions shall be pre-marked with the exhibit numbers that will be used at trial. Plaintiff's trial exhibits are to be numbered 1 through 199; Defendants' exhibits are to be numbered 200 and following.

(k) The Court utilizes JERS (Jury Evidence Recording System) to allow evidence admitted for a trial to be viewed electronically via touchscreen monitor in the jury deliberation room upon the conclusion of the trial. Please

1 note that the jury will receive a verbatim copy of the JERS exhibit list. Please
2 carefully review and follow the instructions provided.

3 [JERS Instruction Sheet for Attorneys](#)

4 **9. *Designation of Testimony***

5 (a) Designation of substantive, as opposed to impeachment, deposition
6 testimony shall be by highlighting and shall be served upon opposing counsel,
7 but *not* filed, by **March 17, 2022**.

8 (b) Cross-designations by highlighting in a different color shall be
9 served, but *not* filed, by **March 24, 2022**.

10 (c) Objections to any designated deposition testimony shall be filed and
11 served by **March 31, 2022**, and shall be heard and resolved at the pretrial
12 conference.

13 (d) Copies of designations to which there are objections shall be
14 provided to the Court, on a flash drive or disk, by **March 31, 2022**.

15 **10. *Motions in Limine***

16 (a) All unresolved substantive or evidentiary issues that may
17 foreseeably arise during trial shall be addressed by Motions in Limine to be
18 filed and served by **April 1, 2022**.

19 (b) Responses shall be filed and served by **April 8, 2022**.

20 (c) Replies shall be filed and served by **April 15, 2022**.

(d) The parties shall note Motions in Limine for hearing at the pretrial conference.

11. *Pretrial Order*

(a) A joint Pretrial Order, prepared in accordance with the format provided in LCivR 16(e) shall be filed by **April 21, 2022**, and a copy e-mailed in Word format to the Court at peterasonorders@waed.uscourts.gov. The Court will *not* accept individually filed pretrial orders.

(b) Any facts that are agreed upon by the parties and require no proof must be submitted to the Court prior to trial as written stipulations.

(c) The list of exhibits contained in the joint Pretrial Order shall reflect the exhibit marking scheme described above in paragraph 10(j).

(d) In preparing the joint Pretrial Order, the parties shall confer regarding duplicate exhibits and determine which party will submit such exhibits for trial.

12. *Trial Briefs and Proposed Voir Dire* shall be filed by **April 21, 2022**.

13. *Jury Instructions*

No later than **April 21, 2022**, the parties shall:

(a) Confer regarding jury instructions and file jointly proposed jury instructions and a table of proposed jury instructions for the Court's consideration.

(b) The jointly proposed jury instructions should address only issues that are unique to this case and shall include instructions regarding the elements of each count, any necessary definitions, and a proposed verdict form.

(i) All instructions shall be short, concise, understandable, and neutral statements of the law. Argumentative instructions shall not be submitted or given.

(ii) The parties shall provide the Court electronically with a table of proposed, cited Jury Instructions. This table shall include:

(a) The instructions on which the parties agree;

(b) The instructions that are disputed; and

(c) The basis of any objection.

(d) The jury instruction table shall be substantially in the following form:

Proposed by:	Instruction #	9th Cir. Cite	Objection	Response to Objection
--------------	---------------	---------------	-----------	-----------------------

(c) In addition to the jury instruction table, each party shall address any objections they have to instructions proposed by any other party in a memorandum which identifies the specific portion of any proposed instruction to which they object and shall concisely state the basis for the objection.

1 (d) If any proposed instruction is a modified version of model
2 instructions, the parties shall identify the modification and legal authority for
3 the modification.

4 (e) Objections asserting that an instruction sets forth an incorrect or
5 inappropriate statement of law shall cite specific legal authority supporting the
6 objection.

7 (f) Failure to file an objection and supporting memorandum may be
8 construed as consent to the adoption of an instruction proposed by another
9 party.

10 **14. Court Dates**

11 (a) A pretrial conference will be held on **May 3, 2022**, at **9:30 a.m. by**
12 **video conference**. The parties will receive connection instructions via email
13 from the Court. Non-parties may list to hearings by calling the Court's public
14 conference line at **888.363.4749**, and entering **access code 4939688#** five
15 minutes before the hearing time (no security code is needed).

16 (b) The **jury** trial shall commence on **May 16, 2022**, at **9:00 a.m.** in
17 **Spokane**, Washington. Counsel estimates a trial length of **two weeks**.

18 **15.** The Court requires that the following be submitted to the courtroom
19 deputy clerk no later than **May 9, 2022**.

20 (a) The original binder of exhibits together with three discs or flash
21 drives containing copies of the same. Exhibits for presentation at trial shall be

1 placed in a tabbed binder indexed by exhibit number with exhibit tags placed
2 consistently on the bottom right corner of each exhibit.

3 (b) One copy of a final joint exhibit list. [Joint Exhibit List Form](#)

4 (c) One copy of witness lists in the order in which the witnesses are
5 expected to be called to testify.

6 **16.** Pursuant to Fed. R. Civ. P. 16, this schedule shall not be modified
7 unless the Court finds good cause to grant leave for modifications. Fed. R. Civ. P.
8 16(f) provides for sanctions for failure to obey the Scheduling Order.

9 **IT IS SO ORDERED.** The District Court Clerk is hereby
10 directed to enter this Order and to provide copies to counsel.

11 **DATED** this April 22, 2021.

12 *s/ Rosanna Malouf Peterson*
13 ROSANNA MALOUF PETERSON
14 United States District Judge
15
16
17
18
19
20
21